

w/o

FILED	
DATE: 4-8-11	346 O'Clock P.M.
JEANNE HICKS, CLERK	
BY: RHONDI HAGEN	
Deputy	

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF YAVAPAI

DIVISION PRO TEM B

HON. WARREN R. DARROW

CASE NO. V1300CR201080049

TITLE:

STATE OF ARIZONA,

(Plaintiff)

v.

JAMES ARTHUR RAY,

(Defendant)

JEANNE HICKS, CLERK

BY: R. Hagen, Deputy Clerk

DATE: April 8, 2011

COUNSEL:

Yavapai County Attorney
Sheila Polk/Bill Hughes,
(Via OnBase)
(For Plaintiff)

Thomas K. Kelly,
(Via electronic mail)
(Co-Counsel for Defendant)

Luis Li/Brad Brian/Truc Do/Miriam Seifter
MUNGER TOLLES & OLSON LLP,
(Via electronic mail)
(Co-Counsel for Defendant, *Pro Hac Vice*)

HEARING ON:
TRIAL – Day 30

NATURE OF PROCEEDINGS

COURT REPORTER
Mina Hunt

START TIME: 9:09 a.m.

APPEARANCES:

Sheila Polk, Counsel for State
Bill Hughes, Co-Counsel for State
Detective Ross Diskin, Case Agent
James Arthur Ray, Defendant
Tom Kelly, Co-Counsel for Defendant
Luis Li, Co-Counsel for Defendant
Truc Do, Co-Counsel for Defendant
Miriam Seifter, Co-Counsel for Defendant
Victim Services Representative

The Jury is not present.

The Court and Counsel discuss the Motion for Reconsideration concerning the Court's March 1, 2011 Ruling. The Court states that this is not a new Ruling and there has not been any real challenge to the Ruling until the testimony arose with Mr. Mercer. The Court and Counsel discuss providing the Jury with a limiting instruction.

The Court and Counsel discuss the need for additional witnesses regarding other sweat lodge ceremonies and whether this may be cumulative. Discussion ensues regarding the witnesses that testified at the Rule 404(b) hearing and witnesses being *Terrazas* qualified.

Counsel for Defense moves the Court to preclude references to any sweat lodge events other than the 2009 event if proffered by Debbie Mercer. Argument ensues. The Court **denies** the oral motion.

The Court and Counsel discuss evidence and prejudice, and the manner in which Counsel are questioning witnesses as well as leading questions. The Court finds there are times when leading questions are necessary; however the Court asks Counsel to be conscious of Rule 602 and the basis of questions.

Discussion regarding the proposed limiting instruction resumes. The Court requests that both Counsel review the 404(B) ruling and the discussion that relates the physical effects with the manner in which sweat lodges were conducted; there was a *Terrazas* finding with regard to that as well. The Court agrees an instruction needs to be provided today but the form of the instruction is not finalized at this time.

~~~Recess~~~

At 9:53 a.m. the Court, Counsel, Detective Diskin, Defendant and the Jury are present.

Debra Jean Mercer is sworn and testifies.

The Court and Counsel conduct a sidebar discussion on the record.

Debra Jean Mercer testimony continues.

The Jury is reminded of the admonition and excused for a recess. The witness is advised of the Rule of Exclusion of Witnesses and excused for a recess.

~~~Recess~~~

At 11:29 a.m. the Court, Counsel, Detective Diskin, Defendant and the Jury are present.

Debra Jean Mercer resumes the witness stand and testifies further.

The Court and Counsel conduct a sidebar discussion on the record.

Debra Jean Mercer testimony continues.

Defense Counsel moves the Court for a 105 limiting instruction to the Jury.

The Jury is reminded of the admonition, excused for the noon recess and leaves the courtroom. The witness is reminded of the Rule of Exclusion of Witnesses, excused for the noon recess and leaves the courtroom.

The Court and Counsel discuss the proposed form of limiting instruction. The Court will consider this further during the noon recess.

~~~Noon Recess~~~

At 1:27 p.m. the Court, Counsel, Detective Diskin and Defendant are present. The Jury is not present.

The Court and Counsel finalize the limiting instruction to be provided to the Jury. The Court directs that the Limiting Instruction and the State and Defense's proposed instructions shall be filed.

~~~Recess~~~

At 1:53 p.m. trial resumes with all previously appearing parties and the Jury present.

Debra Jean Mercer resumes the witness stand and testifies further.

The Court reads the limiting instruction to the Jury.

Debra Jean Mercer testimony continues.

The Jury is reminded of the admonition and excused for a recess. The witness is advised of the Rule of Exclusion of Witnesses and excused for a recess.

~~~Recess~~~

At 2:52 p.m. the Court, Counsel, Detective Diskin and Defendant are present. The Jury is not present.

Defense Counsel Kelly raises an issue regarding testimony prior to the recess. The Court reviews the Real Time regarding the testimony. Discussion ensues. Counsel for State will ask appropriate open-ended questions of the witness.

~~~Recess~~~

At 3:02 p.m. the trial resumes with all previously appearing parties and the Jury present.

Debra Jean Mercer resumes the witness stand and testifies further.

Exhibits 522 and 527 are offered and admitted into evidence without objection.

Exhibit 133, previously admitted, is played for the Jury.

Exhibit 672 is offered and admitted into evidence pursuant to stipulation of Counsel and is played for the Jury.

The Jury is reminded of the admonition, excused for the day and instructed to return at 9:15 a.m. on Tuesday. The witness is reminded of the Rule of Exclusion of Witnesses, excused for the evening recess and leaves the courtroom.

The Court stands adjourned for the day.

END TIME: 3:46 p.m.

cc: Gallagher & Kennedy, P.C., Counsel for Shore Family (e)
Murphy, Schmitt, Hathaway & Wilson, PLLC, Co-Counsel for Brown Family (e)
Stone & Magnanini, Co-Counsel Brown Family (e)
Aspey, Watkins & Diesel, PLLC, Counsel for Neuman Family (e)
Steptoe & Johnson, Counsel for KPNX Broadcasting Company, TruTV and In Session (e)
Perkins, Coie, Brown & Bain, Counsel KTVK-TV (e)
Division PTB (e)
Victim Services (e)
Court Administration
Customer Service Supervisor, Verde